

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KURT SKAU,

Plaintiff,

v.

JBS CARRIERS, INC.,

Defendant.

Case No. C18-00681-RAJ

ORDER

This matter comes before the Court on Plaintiff Kurt Skau's Motion to Remand. Dkt. # 13. Defendant JBS Carriers, Inc. opposes the Motion. Dkt. # 17. For the reasons that follow, Plaintiff's Motion to Remand is **DENIED**. Dkt. # 13.

This is Defendant's second attempt to remove this case. Plaintiff filed this case in King County Superior Court on September 5, 2017. Defendant filed a Notice of Removal on October 5, 2017. *See Skau v. JBS Carriers, Inc.*, No. 2:17-cv-01499-JCC. On November 30, 2017, Plaintiff' Motion to Remand was granted. *Id.* Defendant removed

1 this case for a second time on May 10, 2018. Dkt. # 1. Plaintiff then filed this Motion to
2 Remand. Dkt. # 13.

3 Removal jurisdiction is strictly construed in favor of remand, and any doubt as to
4 the right of removal must be resolved in favor of remand. *Harris v. Bankers Life & Cas.*
5 *Co.*, 425 F.3d 689, 698 (9th Cir. 2005). The party seeking a federal forum has the burden
6 of establishing that federal jurisdiction is proper. *Abrego Abrego v. Dow Chem. Co.*, 443
7 F.3d 676, 682-83 (9th Cir. 2006). The removing party must carry this burden not only at
8 the time of removal, but also in opposition to a motion for remand. *See Moore-Thomas v.*
9 *Alaska Airlines, Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009). Pursuant to the “well-pleaded
10 complaint rule,” federal-question jurisdiction exists “only when a federal question is
11 presented on the face of the plaintiff’s properly pleaded complaint.” *Caterpillar Inc. v.*
12 *Williams*, 482 U.S. 386, 392 (1987).

13 Defendant asserts that this Court has jurisdiction over this matter on the basis of
14 diversity of citizenship of the parties. The Court has diversity jurisdiction over civil
15 actions where the amount in controversy exceeds \$75,000 and the case is between
16 citizens of different states. 28 U.S.C. § 1332. The Ninth Circuit has defined the amount
17 in controversy as the “amount at stake in the underlying litigation.” *Gonzales v. CarMax*
18 *Auto Superstores, LLC*, 840 F.3d 644, 648–49 (9th Cir. 2016) (internal citations omitted).
19 Where it is unclear or ambiguous from the face of the complaint whether the requisite
20 amount in controversy is plead, the removing defendant bears the burden of establishing,
21 by a preponderance of the evidence, that the amount in controversy exceeds the
22 jurisdictional amount. *Urbino v. Orkin Servs. of California, Inc.*, 726 F.3d 1118, 1122
23 (9th Cir. 2013) (citing to *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 699 (9th Cir.
24 2007)). “[T]he defendant must provide evidence establishing that it is ‘more likely than
25 not’ that the amount in controversy exceeds that amount.” *Guglielmino*, 506 F.3d at 699
26 (quoting *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398 (9th Cir. 1996)).

27 Defendant relies on the Ninth Circuit decision in *Chavez v. JPMorgan Chase &*

1 Co., 888 F.3d 413, 417 (9th Cir. 2018) to support their argument that there has been a
2 change in law that justifies reconsideration of the previous order remanding this case
3 back to state court. “After a remand, the defendant may generally not remove the case a
4 second time.” *Fritsch v. Swift Transportation Co. of Arizona, LLC*, 899 F.3d 785, 789
5 (9th Cir. 2018) (citing to *Reyes v. Dollar Tree Stores, Inc.*, 781 F.3d 1185, 1188 (9th Cir.
6 2015)). However, a defendant “who fails in an attempt to remove on the initial pleadings
7 can file a removal petition when subsequent pleadings or events reveal a new and
8 different ground for removal.” *Id.* (quoting *Kirkbride v. Cont'l Cas. Co.*, 933 F.2d 729,
9 732 (9th Cir. 1991)). An intervening change in law that gives rise to a new basis for
10 subject-matter jurisdiction qualifies as “a relevant change of circumstances [justifying]
11 reconsideration of a successive, good faith petition for removal.” *Rea v. Michaels Stores*
12 *Inc.*, 742 F.3d 1234, 1238 (9th Cir. 2014) (citing to *Kirkbride v. Cont'l Cas. Co.*, 933 F.2d
13 729, 732 (9th Cir. 1991)); *Reyes*, 781 F.3d at 1188. A defendant can file a successive
14 removal notice within 30 days after a change in law that revealed the facts necessary for
15 federal court jurisdiction. *Rea*, 742 F.3d at 1237–38.

16 As a preliminary matter, the Court finds that the holding in *Chavez* constitutes an
17 intervening change in law that justifies a successive notice of removal. In a subsequent
18 decision, the Ninth Circuit stated that prior to *Chavez*, the Court had not clarified what it
19 meant to say that the amount in controversy is determined “at the time of removal.”
20 *Fritsch*, 899 F.3d at 793. In *Chavez*, the Ninth Circuit explained that the amount in
21 controversy is the “amount at stake in the underlying litigation,” and therefore “the
22 amount in controversy includes all relief claimed at the time of removal to which the
23 plaintiff would be entitled if she prevails.” *Chavez*, 888 F.3d at 417-18. In *Fritsch*, the
24 Court concluded that in light of *Chavez*, a court must include future attorneys’ fees
25 recoverable by statute or contract when assessing whether the amount-in-controversy
26 requirement is met. *Fritsch*, 899 F.3d at 794. In the previous Order granting Plaintiff’s
27 first motion for remand, the district court found that prospective attorney fees cannot be

1 factored into the calculation as to whether the amount in controversy has been met. *See*
2 *Skau v. JBS Carriers, Inc.*, No. 2:17-cv-01499-JCC. A Ninth Circuit decision that
3 directly addresses the basis for the previous order granting remand certainly qualifies as a
4 “relevant change of circumstances,” allowing for a second notice of removal. *Chavez*
5 was published on April 20, 2018 and Defendant’s second Notice of Removal was filed on
6 May 10, 2018, or within the 30 day window allowed for a successive removal notice after
7 a change in law. Therefore, Defendant’s second Notice of Removal was timely filed.

8 At issue now is whether, pursuant to the holdings in *Chavez* and *Fritsch*,
9 Defendant has met their burden to show, by a preponderance of the evidence, that the
10 amount in controversy now exceeds the jurisdictional amount. In its Notice of Removal,
11 Defendant calculates Plaintiff’s prospective damages as \$53,648.66. Dkt. # 1 at ¶¶ 19,
12 20. The statutes underlying Plaintiff’s wage and hour claims allow successful plaintiffs
13 to recover attorneys’ fees. RCW 49.52.070. Pursuant to those statutes, Plaintiff seeks
14 those fees in the Complaint. Dkt. # 1-1. As of the date of Plaintiff’s first motion to
15 remand, Plaintiff’s attorneys had incurred \$14,085.00 in fees. Dkt. # 1 at ¶ 21. The total
16 of these figures falls \$7,266.34 short of the \$75,000 requirement for the amount in
17 controversy. By the time of Defendant’s second Notice for Removal, Plaintiff had
18 accrued \$49,707.52 in attorneys’ fees. Dkt. # 13 at 13. Since that time, the parties have
19 engaged in additional briefing regarding this Motion. Defendant argues that Plaintiff’s
20 attorneys have likely incurred greater than \$7,266.34 in additional fees performing just
21 these tasks. Even if the award of attorneys’ fees is divided between the 20 proposed
22 putative class members, based on the significant fee awards Plaintiff’s attorneys have
23 received in analogous cases, it is more likely than not that the attorneys’ fees that may be
24 awarded in this case would exceed the remaining amount required to meet the amount in
25 controversy requirement. Dkt. # 1 at ¶ 21; Dkt. # 13 at 13. The Court finds that
26 Defendant has proved by a preponderance of the evidence that the amount in controversy
27 in this case meets the threshold amount of \$75,000.

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3 For the reasons stated above, Plaintiff's Motion to Remand is **DENIED**. Dkt. # 13.
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5 DATED this 27th day of December, 2018.
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8 A handwritten signature in black ink, reading "Richard A. Jones", written over a horizontal line.

9 The Honorable Richard A. Jones
10 United States District Judge
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